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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 841 (GBD)

5 EVALDAS RIMASAUSKAS,

6 Defendant.

Conference

7 -----x
8 New York, N.Y.
9 November 6, 2019
10 10:30 a.m.

11 Before:

12 HON. GEORGE B. DANIELS,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN
16 United States Attorney for the
17 Southern District of New York
18 EUN YOUNG CHOI
19 OLGA I. ZVEROVICH
20 Assistant United States Attorney
21 PAUL D. PETRUS, JR.
22 Attorney for Defendant

23 ALSO PRESENT:
24 JONATHAN POLONITZA, FBI
25 INTERPRETER, YANA AGOUREEV (Russian)

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1 (Case called)

2 MS. CHOI: Good morning, your Honor.

3 Eun Young Choi on behalf of the Government.

4 With me at counsel table is Olga Zverovich and
5 Jonathan Polonitza of the FBI.

6 THE COURT: Good morning.

7 MR. PETRUS: Good morning. Paul Petrus on behalf of
8 Mr. Rimasauskas.

9 THE COURT: Good morning.

10 Mr. Petrus, have you received a copy of the
11 presentence report and had an opportunity to review it with
12 your client?

13 MR. PETRUS: I have, your Honor.

14 THE COURT: Do you have any current objections or
15 corrections to be made to the Court at this time?

16 MR. PETRUS: No, I do not.

17 THE COURT: Let me first start with the Government.
18 Government, do you wish to be heard on sentence?

19 MS. CHOI: Your Honor, I think we'll be brief.

20 The Government submitted a rather extensive sentencing
21 submission regarding this particular defendant.

22 As your Honor knows, he was a prolific money launderer
23 for an extended period of time engaged in very lucrative and
24 extensive fraud against two United States companies.

25 We note that, although the defendant asks for time

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1 served, both the Government and Probation believe that a
2 guideline sentence is necessary in this case and warranted
3 given the specific facts.

4 If I could just highlight, your Honor, very quickly
5 what those facts are, and to the extent your Honor has any
6 further questions, we'd be happy to answer them.

7 First, I think most importantly, this is an individual
8 who has specifically shown through his actions that he is not
9 easily deterred.

10 If you note from your knowledge of the case, and as
11 set forth in our sentencing submission, the scheme involving
12 the theft from the first company -- the first U.S. company --
13 through the use of a false, fake company that used the name of
14 a real company that did business with the victim company was
15 started by Mr. Rimasauskas.

16 He had to travel internationally to open a bank
17 account and submitted false documentation once questions arose
18 about the nature of the business. He understood that that
19 business did not have an ongoing, legitimate business concern,
20 and that it was, in fact, fraudulent.

21 Lest there be any doubt, there was a fact-finding
22 investigation done by the Latvian law enforcement authorities
23 that led to a court decision.

24 During those proceedings, Mr. Rimasauskas made
25 numerous statements that were false to Latvian law enforcement

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1 as well as to the Court. The Latvian courts, nevertheless,
2 found in an equivalent of our civil remedy, sort of contacts
3 and procedures, that the first victim company was, in fact, the
4 victim of a fraud involving Mr. Rimasauskas, and that the money
5 that was stolen, which was approximately \$24 million, should be
6 returned to Victim One.

7 Nevertheless, despite that finding, Mr. Rimasauskas
8 continued in the scheme, this time traveling to Cyprus doing
9 exactly the same thing that he did the last time: Opening a
10 new bank account, brazenly introducing the statements from the
11 first bank that he used in Latvia to show the degree and the
12 amount of transactions that had occurred with the kind of
13 priority victim company to establish that it would be
14 legitimate to assume, from the Cyprus bank's perspective, that
15 there would be multimillion dollar wires coming from other
16 technology companies, including Victim Two, in this case.

17 He had to fill out an application, which detailed that
18 he understood that there would be a scheme involving Victim
19 Two, since he put Victim One and Victim Two's names in the bank
20 documentation as counter parties, and then continued with the
21 scheme, including by submitting false documentation and
22 contracts that he signed, attempting to ensure that transfers
23 of money were made between the bank accounts he fraudulently
24 opened and other bank accounts so as to make it very difficult
25 for law enforcement or the victims to recoup those expenses.

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1 It is true, as the defendant knows, that much of the
2 money had now been reversed, but there's still \$26 million
3 worth of loss that has not been recouped at this point, and
4 that is directly due to efforts made by Mr. Rimasauskas and
5 others that worked with him to quickly disburse the funds once
6 they were stolen from a victim company to a series of other
7 company bank accounts all over the world in furtherance of
8 their money laundering scheme.

9 In sum, your Honor, this is a defendant who was not
10 specifically deterred in a situation in which the fraud had
11 been found by a Latvian court. He traveled internationally to
12 facilitate that scheme and submitted a slew of fake documents
13 to various banks and law enforcement authorities in order to
14 purportedly justify and make it appear as though there was a
15 legitimate business concern and a business, that he understood,
16 was not, in fact, legitimate and continued, essentially, until
17 he was caught by law enforcement.

18 I think in this case it's not a situation in which the
19 defendant should get time served. We think it would be
20 inappropriate and that there is a general deterrent needed in
21 light of the prolific amount of business email compromised
22 schemes that happened. For situations in which that
23 individuals such as the defendant is found to be guilty and
24 caught by law enforcement, there needs to be a message sent to
25 others that are similarly situated like him that they should

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1 not engage in this type of fraudulent behavior regardless of
2 where they might be in the world.

3 THE COURT: Was there some attempt at cooperation in
4 this case?

5 MS. CHOI: Your Honor, could we have a sidebar on that
6 question?

7 THE COURT: All right.

8 Let me go past that for a second.

9 MS. CHOI: OK.

10 THE COURT: Can you tell me a little bit more about
11 the extent of the criminal activity, what your deputy discussed
12 with regard to others involved, other coconspirators?

13 MS. CHOI: Your Honor, as to the scheme, we believe
14 there are other coconspirators involved. I'm not going to
15 represent that Mr. Rimasauskas was number one at the apex among
16 them. I would say that he did play a central role
17 nevertheless, and a repeating role throughout this period of
18 time, which was at least from 2013 to 2015.

19 His role was primarily as the money launderer of the
20 operation; meaning, he opened the bank accounts, he maintained
21 the bank accounts because his name was the only one as the
22 authorized signatory to allow for those transactions.

23 It may, in fact, be the case that there are other
24 people involved in directing where the funds should be; but
25 what we do know is he played a role in the opening of the bank

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1 accounts, maintaining the bank accounts, interfacing with the
2 banks when the banks had a question about the number and the --
3 the number of transactions and the volume of transactions at
4 issue in order to increase the transfer limits and to make
5 representations about the legitimacy of the wires that he knew
6 were, in fact, stolen funds.

7 So he was the money launderer of the operation. We're
8 not alleging that he was the person who was behind the keyboard
9 who, in fact, sent the fishing emails that managed to trick
10 Victim One and Victim Two into this scheme; but nevertheless,
11 he understood that that was the part of the scheme, that there
12 would be a way in order to trick these victim companies into
13 transferring these large, millions of dollars of funds to a
14 fraudulent company that he maintained was his, and told people
15 was his -- including law enforcement -- and also represented he
16 was doing legitimate business when he knew, in fact, they
17 weren't.

18 THE COURT: How would you characterize the extent of
19 his personal profit again?

20 MS. CHOI: To our understanding, we don't have
21 evidence that he made the full loss amount. Obviously, I think
22 that he was paid a relatively large sum, but it was not nearly
23 as much as the amount that was stolen from the companies.

24 THE COURT: What do you mean by "relatively large
25 sum"?

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1 MS. CHOI: Your Honor, I think it's in the range of a
2 hundred thousand dollars that he made for this.

3 THE COURT: And no other arrests with regard to this
4 crime have been --

5 MS. CHOI: None to date, your Honor.

6 THE COURT: And were any funds recovered as opposed to
7 blocked?

8 MS. CHOI: I can break this down. There is Victim
9 One, which is approximately \$24 million, and Victim Two, which
10 is almost a hundred million dollars.

11 With regard to Victim One, almost all of those funds
12 were returned after the Latvian court decision. So they were
13 frozen in Latvia, for the most part, and returned to Victim
14 One.

15 So Victim One is, essentially, made whole, which is
16 why Victim One did not come forward with restitution amounts.

17 With regard to Victim Two, there was a point at which
18 the fraud was detected and there was a reversal of some amount
19 of funds that could happen relatively quickly. That was about
20 \$74 million worth of funds.

21 The \$26 million amount that's left for restitution
22 purposes is the amount that was outstanding that was a loss for
23 Victim Two.

24 The reason for that was because, even though they
25 could reverse about \$74 dollars of wire, that was the most

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1 recent wire that was sort of available to them in terms of
2 funds through these international transactions.

3 The \$26 million had already been disbursed by the
4 defendant and his coconspirators to a series of other bank
5 accounts in Cyprus, in Latvia, and elsewhere.

6 Once that second transfer happened, you need to go
7 through other means to try to recoup those expenses. The
8 Government has devoted resources towards civil forfeiture of
9 those funds, including mutual legal assistance treaty requests
10 to other law enforcement to help us with that, but that is an
11 onerous and long-term process, and those monies, for the most
12 part, have not been returned to Victim Two as of yet.

13 THE COURT: Was any money seized or recovered from
14 this defendant?

15 MS. CHOI: No, your Honor. He was arrested when he
16 was returning from Belarus to Lithuania and he did not have
17 funds on him. He didn't have any cash on him at the time.

18 THE COURT: Is there any indication that any amount of
19 this restitution is likely to be collected?

20 MS. CHOI: Your Honor, I would say it's unlikely that
21 a significant portion will be recovered from this particular
22 defendant. But there are other means by which we're attempting
23 to resolve those outstanding funds, including by working with
24 foreign law enforcement who had in some instances been able to
25 seize some of those funds that will go towards this end.

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1 To the extent that we can through civil forfeiture
2 recoup those funds, we'll obviously send them back to Victim
3 Two, and it would decrease Mr. Rimasauskas's outstanding
4 judgment.

5 THE COURT: And these are funds that have been
6 identified, seized, in corporate bank accounts?

7 MS. CHOI: Yes, your Honor, and those are all
8 fraudulent bank accounts, all shell companies that don't do
9 anything other than receive funds from these types of fraud
10 schemes.

11 Our understanding is that they were opened by some of
12 Mr. Rimasauskas's coconspirators, some of whom he knew -- and
13 knew well -- and they went and opened these bank accounts
14 because, in part, I think, they understand that once you move
15 the funds from the first identified bank account to several
16 other ones in various countries, it's harder to reverse those
17 transactions.

18 THE COURT: Does the investigation indicate that there
19 are other individuals who played a similar role as this
20 defendant, or this defendant played a particular role with
21 regard to the transfers?

22 MS. CHOI: I would say this defendant is uniquely
23 situated in the sense that he opened the main bank accounts in
24 the -- I guess, I don't know how to put this -- the Taiwanese
25 hardware manufacturer's name.

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1 He was the one who created those particular bank
2 accounts, the first step. There are other individuals whose
3 names appear on the other bank accounts that were being used
4 who would then further disburse those funds, but they are not
5 -- we don't have any evidence to suggest the same people were
6 used in both Scheme One and Scheme Two against Victim One and
7 Victim Two the way that this particular defendant was.

8 Meaning, he was there for both of those victims, and I
9 don't believe that we have evidence that suggests that these
10 other sort of second tier money launderers were in the scheme
11 for the same period of time.

12 THE COURT: And all of the approximately \$122 million
13 was supposed to flow through this one bank account?

14 MS. CHOI: Two bank accounts but, yes, your Honor.

15 THE COURT: Set up by this defendant?

16 MS. CHOI: Exactly.

17 THE COURT: And disbursed to other bank accounts
18 around the --

19 MS. CHOI: Yes, your Honor.

20 Again, it would have been one thing had the defendant
21 stopped after the first bank account and the first victim.
22 There could be multiple reasons why he did that. He might not
23 have even known that this was a fraud if had just did that one
24 thing.

25 But the fact that he had been involved in the legal

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1 proceedings in Latvia and that he made false statements, and
2 then continued to proceed with the scheme with regard to Victim
3 Two is that, I think, sets him apart.

4 He's not a passive player who just used his name to
5 open these bank accounts. He did it once, he did it twice, and
6 created all sorts of fake documents with his signature on them
7 to support this fraud and to make representations to law
8 enforcement -- the courts -- that this was a real company when
9 it was, in fact, nothing but stealing from these victim
10 companies.

11 THE COURT: After law enforcement, or the court
12 proceedings began, how much money flowed to the bank account?

13 MS. CHOI: Right. The first victim, it was about \$24
14 million that flowed to the first bank account that was opened
15 in Latvia by the defendant; and then with regard to the second
16 victim in Cyprus, again, a bank account was opened by the
17 defendant. That was the one that was about \$98 million.

18 He saw the full scope of the \$24 million. It was bank
19 accounts in his name. We have evidence that he monitored the
20 transactions that were going into and out of the account.

21 Even if he were not the person directing the flow of
22 the funds, he knew what was going on there, he had control over
23 the account, and that's why they -- he had to play this active
24 role in negotiating with the bank to make sure the funds went
25 through, and he was fighting with the banks when the banks

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1 seized the funds and making representations to law enforcement
2 in Latvia -- as well as their courts -- about the nature of
3 this purported, ongoing concern that was not, in fact, a real
4 company.

5 THE COURT: How much money after that was still --

6 MS. CHOI: Your Honor, I'm trying to understand what
7 you mean by that.

8 THE COURT: You say that he continued his activities
9 after he was involved in these court proceedings.

10 MS. CHOI: Right. That would be the \$96 million, your
11 Honor.

12 THE COURT: So after he was confronted with this
13 fraudulent scheme --

14 MS. CHOI: Yes.

15 THE COURT: -- you say another \$96 million flowed or
16 was attempted to flow?

17 MS. CHOI: Right. The jig was up with regard to
18 Victim One in Latvia, so the solution for the defendant and his
19 coconspirators was: Well, like, why don't we try it again.
20 Let's go back to the well and go to Cyprus this time.

21 That required the defendant to fly to Cyprus, present
22 the documents to the Cypriot Bank, open a bank account in
23 Cyprus after all the Latvian proceedings were going down.

24 Then, quite frankly, he was pretty brazen about it
25 because he took the statements from the victim, from the first

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1 victim bank in Latvia, which showed the degree and volume of
2 the transactions coming from Victim One in an effort to trick
3 the Cypriot Bank to say: This is a legitimate business. Look
4 how much money we got from Victim One.

5 On that basis, they allowed for the opening of that
6 bank account in Cyprus and then the \$98 million that came from
7 Victim Two in various wires.

8 So all that happened with Victim Two after he
9 understood what was going on to be a fraud with regard to
10 Victim One, if you see the facts in the most sympathetic light
11 to the defendant.

12 THE COURT: When you say Victim One, you're talking
13 about the victim the restitution order is --

14 MS. CHOI: No. Victim Two is the victim for
15 restitution.

16 So with regard to Victim One, they were, luckily, in
17 Latvia, able to seize almost all the funds and return them
18 after the Latvian court proceedings.

19 With regard to Victim Two, perhaps because they had
20 become a little more sophisticated, they more quickly disbursed
21 the funds after it hit that account that the defendant had
22 opened into various other offshore accounts.

23 Although they were able to reverse \$74 million worth,
24 the \$26 million -- I'm sorry, the \$26 million that is left over
25 is restitution that represents the victim who represents the

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1 actual lost funds, which we have not been able to get back for
2 Victim Two as of yet.

3 THE COURT: Let me hear from Mr. Petrus.

4 MR. PETRUS: Thank you, your Honor.

5 I only disagree with the Government's recommendation
6 for sentence in this case. I think the guidelines sentence is
7 wholly inappropriate and my recommendation for the Court is
8 that he receive time served.

9 He has been in for two years and eight months, and as
10 I laid out in my sentencing memorandum in the supplement
11 letter, he also served, as part of that, five months in
12 Lithuania, and there's argument there as to why he should get
13 credit for that.

14 He has no prior record. He has a long work history.
15 He has been married for 21 years. He's been married for 21
16 years, and in addition he's not eligible for any programs in
17 the U.S. system.

18 As to some of the Government's points, your Honor, I
19 think what's interesting about it is, is that it's more
20 persuasive what the Government is not saying than what they are
21 saying.

22 For example, Judge, they don't allege that
23 Mr. Rimasauskas created this conspiracy. They don't allege
24 that he led it. They don't allege that he organized it. They
25 don't allege that he was the muscle behind it. They don't

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1 allege that he was the brains behind it.

2 They don't allege that he brought the technical
3 computer knowledge to execute it. They don't even allege that
4 he translated documents from Lithuanian to English, and they
5 don't allege that he brought the legal expertise that a lawyer
6 would need to draft up these documents, and they admit, of all
7 the money lost, it's about a hundred thousand dollars that he
8 got away with.

9 I think it's important for the Court to continue to
10 sentence him to time served to distinguish him from all the
11 people in the conspiracy who must have existed and did far
12 worse.

13 His role was fungible and easily replaceable; and as
14 near as I can tell, one of the primary reasons why he was
15 picked up and brought into this conspiracy is because he had EU
16 citizenship so he could open up the bank accounts, and he was
17 down on his luck with work and he was drinking heavily. He has
18 a long history of alcohol abuse, unfortunately.

19 So for all those reasons, I think that he needs a
20 sentence that is very distinguishable from all those other
21 people, and I'd ask the Court to impose time served.

22 Thank you.

23 THE COURT: I'm just not clear who you're asking me to
24 compare him to because I don't have any information about
25 others involved, what their roles were, what the extent of

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1 their activity was.

2 I am not sure, other than because, as they're saying,
3 his being here as the person who has been caught and has taken
4 the fall, I don't understand who else I'm supposed to say is
5 somehow more culpable or played a more significant role than he
6 did, other than the abstract argument that you made that there
7 must be other bad people out there that he was a coconspirator
8 with who did worse things than he did.

9 MR. PETRUS: Well, your Honor, it's unfortunate there
10 is nobody else that's been brought to justice in this matter,
11 but the Court can clearly infer from what the Government's not
12 saying, and what they are accusing him of doing, that he did
13 not lead it. They don't allege that he did.

14 THE COURT: The only thing I'm concerned about is, you
15 wanted me to infer things that he, in fact, has knowledge of
16 and I'm not sure why I should be trying to guess that somehow
17 there are other people that were involved with him that are
18 more culpable when that isn't the representations that are
19 being made by either him or you: As to who it was, what they
20 did, why he is so much less culpable than they are, why and to
21 what extent his role is somehow in mitigation compared to some
22 other people or some other characters that you are indicating
23 that are involved here.

24 MR. PETRUS: Your Honor, can we have a sidebar on this
25 brief issue, please?

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1 THE COURT: All right.

2 MR. PETRUS: Thank you.

3 (Pages 19 through 30 SEALED by order of the Court)

4 (Continued on next page)

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1 (In open court)

2 THE COURT: How much time did you want, Mr. Petrus?

3 MR. PETRUS: Given it's the holiday, can I have until
4 January, your Honor?

5 THE COURT: All right.

6 I'm going to adjourn sentence until January the 9th.

7 MS. CHOI: Your Honor, one moment.

8 (Discussion off the record)

9 MS. CHOI: Your Honor, could we have it earlier? Can
10 we have it in January, if at all possible?

11 The reason for that is, both Ms. Zverovich and I are
12 on separate trials on January 13th, and that's a pretrial
13 conference date for me, I believe.

14 THE COURT: I can move it up in that week, but I can't
15 move it to the week before that.

16 MS. CHOI: One moment.

17 THE COURT: I can move it up to the 7th; otherwise, it
18 will have to be in mid-December. I can give you the week of
19 December 16th, December 17th, 18th and 19th, or the January 7th
20 date.

21 MS. CHOI: Your Honor, I think the Government's
22 preference would be any of those December dates.

23 MR. PETRUS: What was the most recent December date?

24 THE COURT: The 19th. Thursday, December 19th?

25 MS. CHOI: That's fine with the Government.

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1 MR. PETRUS: I can do the 19th as well.

2 THE COURT: Let's schedule sentence for 10 o'clock on
3 that day.

4 We'll continue at that time.

5 If the parties are going to make any further
6 submissions to me for sentence, try to provide that to me at
7 least 10 days before that.

8 MR. PETRUS: Yes, Judge.

9 MS. CHOI: Your Honor, can we have two days after the
10 defendant makes whatever submissions, if any, just so we can
11 rebut, if necessary, things that are said in that submission?

12 THE COURT: I don't have any problem with that.

13 If I get it by December 9th, Monday, then you can have
14 until Friday the 13th to respond.

15 MS. CHOI: Thank you, your Honor.

16 MR. PETRUS: OK.

17 THE COURT: I'll see all the parties then.

18 MS. CHOI: Your Honor, I'm sorry. This is just a
19 minor recordkeeping issue.

20 We already handed up to your Honor the order of
21 restitution. We also have an order of judicial removal.

22 I think our preference just would be to give it to
23 your Honor and then you can enter them at the time of ultimate
24 sentencing.

25 THE COURT: Mr. Petrus?

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1 MR. PETRUS: That's fine with defense.

2 (Adjourned)